COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2017 Legislative Session, Legislative Day No. : December 12, 2017

Bill No.: 1379

Expiration Date: February 15, 2018

Introduced by: Mr. Bartlett, Mr. Callahan, Mr. Pack, Ms. Price, Ms. Williams

A BILL TO ESTABLISH A CLEAN ENERGY LOAN PROGRAM FOR COMMERCIAL PROPERTIES PURSUANT TO LOCAL GOVERNMENT ARTICLE § 1-1101 ET SEQ., MARYLAND ANNOTATED CODE

By the Council: December 12, 2017

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, January 9, 2018 at 6:30 p.m. at the Bradley Meeting Room, Talbot County Courthouse, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO ESTABLISH A CLEAN ENERGY LOAN PROGRAM FOR COMMERCIAL PROPERTIES PURSUANT TO LOCAL GOVERNMENT ARTICLE § 1-1101 ET SEQ., MARYLAND ANNOTATED CODE

WHEREAS, Local Government Article § 1-1102 authorizes counties to establish clean energy loan programs for commercial properties; and

WHEREAS, Talbot County recognizes the benefits of promoting clean energy infrastructure in the community; and

WHEREAS, Talbot County desires to establish a clean energy loan program for commercial properties to encourage local businesses to invest in energy efficient improvements to their properties, and to promote the public health, safety, and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that:

SECTION ONE: Chapter 172 (Taxation) of the Talbot County Code shall be and is hereby amended as follows:

KEY

Boldface.....Heading or defined term

Underlining.....Added to law by Bill

~~Strikethrough~~.....Deleted from law by Bill

* * * ..... Existing law unaffected

* * *

Article VI: Clean Energy Loan Program for Commercial Properties

§ 172-31 Definitions. In this Article, the following words have the meanings indicated:

CLEAN ENERGY FINANCING AGREEMENT – An agreement between a property owner and a clean energy lender providing for the terms and conditions of a clean energy loan.

CLEAN ENERGY LENDER – A private lender providing a clean energy loan.

CLEAN ENERGY LOAN – Any loan made by a private lender to a property owner under the clean energy loan program.

CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR – Any person or entity chosen by the County to manage the clean energy loan program.

CLEAN ENERGY LOAN OBLIGATION – All indebtedness and obligations of a property owner to a clean energy lender under a clean energy financing agreement.

COMMERCIAL PROPERTY – Real property that is (1) not designed principally or intended for human habitation; or (2) used for human habitation and is improved by more than four single family dwelling units.

COUNTY – Talbot County, Maryland.

NON-ACCELERATING LOAN – A loan agreement containing a provision that if the borrower defaults or otherwise fails to make payment, the entire remaining amount on the loan will not become immediately due and payable.

PROPERTY OWNER – An owner of commercial property.

SURCHARGE – Repayment obligations of a clean energy loan, including principal, interest, any applicable fees and administrative costs, collected from a property owner through the County's property tax billing system.

SURCHARGE LIEN – The lien automatically established upon the County's levy of the surcharge on the property tax bill.

§ 172-32 Program established. There is a clean energy loan program to finance energy efficiency projects and renewable energy projects as provided as provided in this Article.

§ 172-33 Rules and regulations. The Director of the County Finance Office may adopt rules and regulations to administer the clean energy loan program consistent with this Article, subject to the approval of the County Council.

§ 172-34 Administration. The clean energy loan program shall be administered by the clean energy loan program administrator. The County Manager may enter into an agreement with a third party to administer the clean energy loan program, subject to the approval of the County Council.

§ 172-35 Loans. Commercial property owners eligible under the criteria in § 172-36, below, may participate in the clean energy loan program for non-accelerating loans greater than $25,000 for a term up to 20 years.

§ 172-36 Eligibility. In order to be eligible for a clean energy loan, the property owner, or in the case of multiple owners of the same property, property owners, shall:

A. Have a 100% ownership interest in the commercial property for which improvements are proposed;

B. Demonstrate that the most recent property taxes, assessments, and charges on the property have been paid;

C. Provide a copy of written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent to the clean energy loan as a priority lien by all current holders of a mortgage or deed of trust on the property;

D. Obtain an energy audit approved under program guidelines demonstrating that the savings projected to be obtained from the improvements over the life of the improvements equal or exceed the principal and aggregate interest to be paid over the term of the loan; and,

E. Establish that the owner(s) of the commercial property is able to repay the loan provided under the clean energy loan program, in a manner substantially similar to that required for a mortgage loan under §§ 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article, Md. Code Ann.

§ 172-37 Qualifying improvements. The following improvements, either new or replacement, qualify as energy efficiency or renewable energy projects under the clean energy loan program:

A. Solar energy equipment;

B. Geothermal energy devices;

C. Wind energy systems;

D. Water conservation devices not required by law;

E. Any construction, renovation or retrofitting of commercial property to reduce energy consumption, including high efficiency lighting and building systems, heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades; and,

F. Any other improvements approved by the County or the clean energy loan program administrator as qualifying as an energy efficiency project or renewable energy project.

§ 172-38 Qualifying costs. A clean energy loan may be used to pay for all costs incurred by a property owner in connection with the qualifying improvements, including the cost of the energy audit; feasibility studies and reports; project management, design, installation, and construction of the qualifying improvements; commissioning; energy savings or performance guaranty or insurance; building accreditation; closing costs of the clean energy loan; permitting fees; administrative fees; post-install evaluation, measurement and verification; and, building accreditation.

§ 172-39 Real property tax surcharge.

A. Repayment of loans. A property owner participating in the clean energy loan program shall repay the clean energy loan through a surcharge on their real property tax bill. Upon receipt of written notice from the clean energy loan program administrator of the execution of a clean energy loan financing agreement, the County shall add the surcharge to the tax property bill issued on July 1 following such notice. The surcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership, whether voluntary or involuntary. A person or entity that acquires property subject to a surcharge assumes the obligation to pay such surcharge. The County may assign the surcharge lien to the clean energy loan program administrator.

B. Calculation. The surcharge for a clean energy loan shall include the clean energy loan obligation and any administrative costs incurred by the County which shall be the actual expenses incurred to administer the program.

C. Notice of levy and lien of surcharge. Upon receiving written notice from the clean energy loan program administrator of the execution of a clean energy loan financing agreement, the property owner shall execute an agreement with the County and the clean energy lender that will be recorded in the Land Records of Talbot County, Maryland, at the expense of the property owner, and which shall include:

(1) The date the clean energy loan was made to the property owner and the property became subject to the surcharge;

(2) The term of the clean energy loan and over which the surcharge will apply to the property;

(3) The clean energy loan obligation and estimated County administrative costs for the first year;

(4) The annual principal and interest amount for each year of the term of the clean energy loan, including any partial year prorated amounts;

(5) Prepayment requirements and any prepayment premium that may apply to a prepayable clean energy loan;

(6) Agreement by the property owner to repay all clean energy loan obligations and the County's administrative costs through a surcharge included on the owner's real property tax bill due and payable on the same date as the real property tax bill;

(7) Acknowledgment by the property owner that an unpaid clean energy loan surcharge constitutes a first lien on the property that has priority over prior or subsequent liens in favor of private parties and that the surcharge will continue as a lien on the property from the date it becomes payable until the unpaid surcharge and interest and penalties on the surcharge are paid in full, regardless of a change in ownership of the property, whether voluntary or involuntary; and

(8) Acknowledgment by the property owner that if payments of surcharges are not timely paid, the surcharge will be collectible as a tax lien through the tax sale process authorized under Tax-Property Article, Title 14, Subtitle 8 of the Maryland Annotated Code and that an overdue surcharge will be so collected, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing.

(9) Acknowledgment by the property owner and the clean energy lender that the County has no liability for the clean energy loan obligation or any costs associated with the collection of amounts due under the clean energy loan.

D. Default. In the event of default on the clean energy loan surcharge, the County shall collect the lien pursuant to Tax-Property Article § 14-801 *et seq.*, irrespective of whether property taxes (or any other taxes, charges, or assessments) are due and owing. The County shall not incur any liability to the clean energy lender or others in the event of default or be obligated to prosecute any claims to foreclose the right of redemption on the property. The County's collection obligation shall be limited to adding the property in question to the annual tax sale, conducting the tax sale, and to the extent permitted by law remitting to the clean energy lender proceeds from the sale and other amounts to satisfy the deficiency and to continue repayment of the loan.

E. Credit of payments. Notwithstanding any provision in this Article to the contrary, payments received from a property owner, made on his or her behalf, or otherwise made to pay an outstanding amount owed by a property owner shall be credited first to all County taxes, assessments, and charges, and any interest or penalties owed to the County.

F. Payment to clean energy lender. The County shall have no ownership of the surcharges collected except for administrative costs provided under this Article. The County shall pay all surcharge payments in any calendar month to the applicable clean energy lender

or the clean energy loan program administrator within 30 days after the end of the month in which such amounts are collected. The County shall have no obligation to make payments to any clean energy lender with respect to any clean energy loan obligation other than that portion of the surcharge actually collected from a property owner for the repayment of a clean energy loan or from the sale of a property where a clean energy loan is in default.

§ 172-40 Financing. Clean energy loans may be provided by any private lender and a clean energy financing agreement may contain any terms agreed to by the clean energy lender and the property owner, as permitted by law, for the financing of clean energy loans. The County may not finance or fund any loan under the program, shall serve only as a program sponsor to facilitate loan repayment by including the surcharge on the County real property tax bill for the property, and shall incur no liability for the loan.

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SECTION TWO: AND BE IT FURTHER ENACTED, that this Bill shall apply to any commercial property for which a clean energy loan (as defined in the Bill) was financed on or after January 1, 2017.

SECTION THREE: AND BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter §213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION FOUR: AND BE IT FURTHER ENACTED, that if any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of such Plan which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION FIVE: AND BE IT FURTHER ENACTED, that the Talbot County Finance Office, or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this Bill as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION SIX: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____ at _____ in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.
ENACTED: _____

By Order _____
Susan W. Moran, Secretary

Williams -

Pack -

Bartlett -

Price -

Callahan -

EFFECTIVE DATE: _____